

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

HICKORY FARMS, INC., a Delaware corporation)	Civil Action No. 05 C 4541
)	
Plaintiff-Counterclaim Defendant)	
)	
v.)	Honorable Matthew F. Kennelly
)	
SNACKMASTERS, INC., a California corporation,)	Honorable Geraldine Soat Brown
)	
Defendant-Counterclaim Plaintiff)	

**PLAINTIFF-COUNTERCLAIM DEFENDANT'S
STATEMENT AND REQUEST UNDER RULE 56(f)**

Plaintiff-Counterclaim Defendant, Hickory Farms, Inc. (herein sometimes referred to as "Hickory Farms") hereby requests, pursuant to Rule 56(f) of the Federal Rules of Civil, leave to take certain discovery which Hickory Farms believes necessary to properly and fully respond to Snackmasters' pending Motion for Summary Judgment.

In addition, Hickory Farms states that it requires clarification as to the extent of the issues raised in Snackmasters' Motion for Summary Judgment, since that clarification may obviate the need for Rule 56(f) discovery at this time.

Snackmasters has stated in its Motion for Summary Judgment that the Motion is based on the grounds that Hickory Farms' trademarks BEEF STICK and TURKEY STICK are generic, without raising any of the other affirmative defenses set forth in Snackmasters' Answer to Complaint and Counterclaims.

Since Snackmasters has limited its Motion for Summary Judgment to the issue of the alleged genericness of Hickory Farms' trademarks BEEF STICK and TURKEY STICK, Hickory Farms does not see the need at this juncture to seek discovery as to

Snackmasters' use of the trademarks BEEF STICK and TURKEY STICK which Snackmasters has thus far failed and refused to produce, including the identification of Snackmasters' distributors and major retailers and the production of documents and correspondence held by these related entities, and Snackmasters correspondence relating to the development and approval of Snackmasters BEEF STICK and TURKEY STICK packaging.

If Snackmasters' counsel will clearly state for the record that Snackmasters' Motion for Summary Judgment is limited to the issue of the alleged genericness of Hickory Farms' marks, and does not relate in any way to Snackmasters' use of the disputed terms, Hickory Farms will not need to complete this previously requested discovery at this time.

In the alternative, if Snackmasters is not willing to restrict the scope of its Motion for Summary Judgment to the issues of genericness, Hickory Farms requests leave to complete the aforementioned discovery prior to responding to Snackmasters' Motion for Summary Judgment.

With respect to Snackmasters' claim in its Motion for Summary Judgment that Hickory Farms' trademarks BEEF STICK and TURKEY STICK are generic, we note that Snackmasters has failed to submit any survey evidence in support of this claim. Hickory Farms asks the court for leave to conduct a survey with regard to public perception of Hickory Farms' trademarks BEEF STICK and TURKEY STICK. Since Snackmasters has failed to support its motion for summary judgment with such evidence, Hickory Farms will not seek to delay the briefing of this matter with its own survey at this time. Rather, Hickory Farms makes this request so as not to waive its right to conduct such a

survey after, and in the event that, Snackmasters' Motion for Summary Judgment on genericness is denied.

Respectfully submitted
Hickory Farms, Inc.

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By: /s/ Burton S. Ehrlich
One of the attorneys
for Plaintiff - Counterclaim
Defendant Hickory Farms, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 23, 2006 he caused true and correct copies of the foregoing PLAINTIFF-COUNTERCLAIM DEFENDANT'S STATEMENT AND REQUEST UNDER RULE 56(f) to be served upon Defendant-Counterclaim Plaintiff's local counsel via facsimile to (312) 201-0737 and was also sent by First Class mail, postage pre-paid on this 23rd day of August 2006 to the following address:

Ms. Patricia S. Smart
Mr. John Bostjancich
Smart & Bostjancich
19 South LaSalle Street
Suite 1300
Chicago, Illinois 60603

and was additionally served on August 23, 2006 upon Defendant-Counterclaim Plaintiff's California counsel via facsimile to (916) 444-5441 and was also sent by First Class mail, postage pre-paid on this 23rd day of August 2006 to the following address:

Mr. R. Michael West
The Law Offices of R. Michael West
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/s/ Burton S. Ehrlich
One of Plaintiff's Attorneys

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